
Costs Decision

Hearing held on 2 November 2016

Site visit made on 2 November 2016

by Louise Nurser BA (Hons) Dip UP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6 December 2016

Costs application in relation to Appeal Ref: APP/W3005/W/16/3151018 Land off 139 Chesterfield Road, Huthwaite, Nottinghamshire NG17 2QF

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mrs F Pether for a full award of costs against Ashfield District Council.
 - The hearing was in connection with an appeal against the refusal of the Council to grant outline planning permission for 37 dwellings including the formation of vehicular access and demolition of existing structures.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Mrs F Pether

2. The costs application was submitted in writing. However, at the Hearing further matters were raised. The main points are summarised as follows:
3. The Council did not behave in a reasonable way and follow good practice. It did not rely on reasons for refusal which stand up to scrutiny on the planning merits of the case; it added to development costs through avoidable delay and it did not discourage unnecessary appeals.
4. The Council's refusal of planning permission ignored the Highway Authority's technical response which was supported by both the appellant's and the Highway Authority's detailed assessment and speed evidence. Indeed, since the planning application was determined, the appeal site has been identified within the Local Plan Preferred Approach¹ document as part of a wider site suitable for housing to be accessed off Chesterfield Road.
5. At the time of the determination of the planning application the Council accepted that it was unable to deliver a 5 year supply of housing. The appeal site lies outside of the village settlement boundary. Therefore, the Council was unreasonable to refuse the application given the provisions of the Framework.
6. The following additional points were made orally. The Council made fleeting reference to housing matters within its original appeal statement and did not provide a Hearing Statement within the prescribed time table. The Technical addendum was the first time that the Council referred to the question of the

¹ 2 February 2016

5% or 20% buffer in relation to the housing supply. This led to additional work for the appellant at a very late stage.

The response by Ashfield District Council

7. The Council acknowledge that the application was refused contrary to officers' recommendation. However, the Committee is not bound to accept their advice. The Council made its decision on the basis of the high speeds recorded on Chesterfield Road as part of the appellant's Access Assessment. These are above the local speed limit. In conjunction with the blind corner and steep hill the proposed development would be prejudicial to highway safety.
8. The Council had a 5 year supply of land supply as of 31 March 2015 but this was not known to the Committee at the time it made its decision. Irrespective, of the reported absence of a 5 year supply of housing, the environmental aspect of the Saved policy EV2 carried some weight. The limited social and economic benefits of the proposed development did not significantly and demonstrably outweigh the character and openness of the countryside.
9. The proposed development was not such that it should be clearly permitted. If the appeal is permitted, the decision will be finely balanced.
10. The following additional points were made orally. The Council had previously made clear in its appeal statement that it considered that it had a 5 year supply of deliverable housing and that the methodology supporting this position was robust. However, the Council had not been able to provide the up- to-date version of the Housing Land Report (HLR) any earlier, as it had not been published and it had provided similar evidence in the 2015 version of the HLR which accompanied the appeal statement.

Reasons

11. The Government's Planning Practice Guidance (PPG) at Paragraph 030 (Reference ID: 16-030-20140306) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The appellant is of the view that the Council has behaved unreasonably in both a procedural and substantive way. Paragraph 47² sets out examples of behaviour that might rise to a procedural award of costs and this includes delay in providing information or other failure to adhere to deadlines, introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen. Similarly, Paragraph 49 refers to examples of behaviour that might rise to a substantive award of costs against a Local Planning Authority and this includes delaying development which should clearly be permitted having regard to national policy; and failure to produce evidence to substantiate each reason for refusal.
12. The Council had provided an appeal statement when the appeal was following the written representation route. This made no reference to the significance of the 5% or 20% buffer to its case. However, whilst I note that reference to consideration of whether the 5% or 20% buffer was most appropriate was made within the Addendum Technical Update and Position Statement ,which was submitted late in the proceedings, I am aware that the appellant made

² ID: 16-047-20140306

- reference to the buffer in its Hearing Statement. Moreover, the justification of a 5% buffer is set out in the Council's annual Housing Land Report, including the 2015 version. Therefore, I do not consider that the Council acted unreasonably in referring to how it calculated the buffer and that this resulted in the appellant being required to undertake additional work.
13. The application was recommended for approval by Council officers at the Planning Applications Committee, and subsequently refused. However, considerations of planning applications necessarily involve matters of planning judgement and Local Planning Authorities are not bound to accept the recommendations of their officers. Nevertheless, if officers' professional or technical advice is not followed authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence to support the decision in all respects
14. In this case, the Local Planning Authority gave greater weight to the existing allocation of the site as open countryside in Saved Policy EV2 of the Adopted Ashfield Local Plan Review 2002, together with local highway safety fears, rather than the presumption in favour of sustainable development, as articulated in the planning officer's report.
15. At the time the Council's officers were of the opinion that the Council did not have a 5 year supply of deliverable housing. Whilst I accept that the provisions of Saved Policy EV2 retained some weight, the Council did not provide substantive evidence to demonstrate how the social and economic benefits are significantly and demonstrably outweighed by the harm to character and openness of the countryside. Therefore, in this case I consider that the Council's behaviour was unreasonable.
16. In relation, to the impact on highway safety, the Highway Authority's own evidence demonstrated to the satisfaction of its technical officers that the proposed visibility splay would be adequate and that it would not be possible to substantiate a refusal on highway grounds having taken into account local speeds, and the particular characteristics of the site. The Council did not produce further evidence to justify why it concluded that the appeal proposal raised substantial highway safety matters, relying on local knowledge and the appellant's own evidence. Therefore, in this instance the Council's behaviour was unreasonable.
17. As such, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

18. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Ashfield District Council shall pay to Mrs Felicity Pether, the costs of the appeal proceedings described in the heading of this decision limited to those costs relating to the appeal against both reasons for refusal excluding any costs resulting from the Council's reference to the buffer within the Addendum Technical Update and Position Statement; such costs to be assessed in the Senior Courts Costs Office if not agreed.

19. The applicant is now invited to submit to Ashfield District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

L Nurser

INSPECTOR